IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

LA.App..No. 1361 of 2000(A)

LAR.61/1989 of II ADDL.SUB COURT,THRISSUR
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APPELLANT/RESPONDENT:

STATE OF KERALA

BY GOVERNMENT PLEADER ADV. SHRI MANOJ.
BY ADDL.ADVOCATE GENERAL

RESPONDENTS/ CLAIMANT & 2ND RESPONDENT IN L.A.R. :
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1. MARIYAKUTTY, S/O. VAZHAPPILLY GEORGE,
WEST PALACE ROAD, THRISSUR.
(*DIED. LEGAL HEIRS ARE IMPLEADED)

2. THE THRISSUR MUNICIPALITY,
REPRESENTED BY THE MUNICIPAL SECRETARY,
THRISSUR MUNICIPALITY.

***ADDL.R3.** V.G. PAUL, S/O. LATE MARIAKUTTY, VAZHAPPILLY HOUSE,
VADAKKECHIRA, THRISSUR.

***ADDL.R4** V.G. VARGHESE, S/O. LATE MARIAKUTTY, VAZHAPPILLY HOUSE,
VADAKKECHIRA, THRISSUR.

*ADDL.R5 V.G. THAMPI, S/O. LATE MARIAKUTTY, VAZHAPPILLY HOUSE, VADAKKECHIRA, THRISSUR.

*ADDL.R6 V.G. JOY, S/O. LATE MARIAKKUTTY, VAZHAPPILLY HOUSE, VADAKKECHIRA, THRISSUR.

(*ADDL. RESPONDENTS NOS. 3 TO 6 ARE IMPLEADED AS LEGAL HEIRS OF RESPONDENT NO.1. VIDE ORDER DATED 28.02.2007 IN C.M.P. No. 2959 OF 2001)

R2 BY ADV. SRI.K.P.VIJAYAN & ADV. SRI.V.B.JINNAH
ADDL. R3 TO R6 BY ADV. SRI.D.KRISHNA PRASAD
SMT.P.F.ROSY
SMT.C.B.SUMA DEVI
SRI.SURESH SAMUEL
SRI.V.M.SYAM KUMAR
SRI.D.NARENDRANATH
SRI.M.HARISHARMA

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

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L.A.A. No. 1361 OF 2000

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Dated this the 28th February , 2007

J U D G M E N T

Sankaran, J:

An extent of 0.3055 hectares of land was acquired for implementation of Rehabilitation Scheme at Thrissur. Notification under section 4(1) of the Land Acquisition Act was issued on 27.01.1987. Award was passed on 27.05.1989 and the property was taken possession on 14.06.1989. A sum of Rs. 2,85,422.56/- was fixed as the total amount of compensation. Dissatisfied with the award, an application for reference was made and the case was referred to the Court.

2. Before the court below, the claimant filed a statement claiming a sum of Rs. 13,000/- per cent as land value. It was contended that the land is situated in a very important place in Thrissur town and that the amount awarded by the Land Acquisition Officer is very low. Before the court below AWs. 1 to 3 and RW.1 were examined and Exts. A1 to A5, R1, R2

and X1 and X2 were marked. The court below held that the claimant is entitled to get land value at the rate of Rs. 12,000/- per cent of the acquired land.

3. The acquired land was classified as wet land by the Land Acquisition Officer. The case of the claimant is that her land is not a wet land nor it is a water logged or marshy land. The acquired land is situated within Thrissur Municipality limits. Numerous Government institutions, temples and educational institutions are situated very near to the acquired land. The property has road access. It has come out in evidence that the adjacent land was acquired at the instance of the Thrissur Municipality for establishing a swimming pool and due to obstruction to flow of water, the acquired land in the present case is water logged. An advocate commissioner was appointed to ascertain the nature and importance of the land. He filed Ext.X1 report and sketch. The commissioner was examined as A.W.2. No objection was filed by the State or requisitioning authority against the commissioner's report. The facts stated in Exts. X1 and X2 were not challenged by them and no such challenge was made in the cross examination of A.W.2 commissioner . The commissioner stated that

the acquired land is not a waste land and not a wet land, though the property was classified as wet land in the land register years back. The commissioner noted in the report the importance of the land and its location. On the southern side of the acquired land, there is a residential plot. The advocate commissioner who is a very senior member of the Bar has noted all the relevant details in the report and the report was accepted by the court below . The court below, on the basis of the evidence on record, held that the acquired land is not a wet land as contended by the Land Acquisition Officer .

4. The court below also relied on Exts. A1 to A3 and A5 documents to assess the value of the acquired land. Witnesses were also examined to prove the documents and the value and the importance of lands covered by those documents and also that of the acquired land. On a very detailed discussion, in paragraph 12 of the judgment, the court below came to the conclusion that the acquired land is similar to the land covered by Exts. A1 to A3 and A5 and fixed the land value at the rate of Rs. 12,000/- per cent. On a re-appraisal of the evidence on record, we agree with the reasoning and findings of the court below . We agree with

the court below that the land value is to be fixed at the rate of Rs. 12,000/- per cent. No interference is called for. Appeal lacks merit.

5. The court below has granted statutory benefits to the claimant. However, interest on solatium was not granted. Evidently, the judgment was pronounced before the decision of the Supreme Court in **Sunder vs. Union of India(2001 (3) 489 (SC)).** In view of the decision in **Sunder's** case, the claimant is entitled to get interest on solatium as well.

For the foregoing reasons, Land Acquisition Appeal is dismissed subject to the modification in respect of interest on solatium as indicated above.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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KURIAN JOSEPH &
K.T. SANKARAN, JJ.

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L.A.A. No. 1361 OF 2000

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Dated this the 28th February, 2007

J U D G M E N T